CASE No. 86 - 1801 (3)

Supreme Court, U.S.
F I L E D
JUN 24
JOSEPH F. SPANIOL, JR.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

IRVIN JAMES HUNTZINGER, Sr.,
Petitioner,

v.
UNITED STATES OF AMERICA,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITIONER'S **REPLY BRIEF** TO THE --- MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In The Supreme Court of the United States

October Term , 1986

No. 86-1801

Irvin James Huntzinger, Sr., Petitioner

v.

United States of America

On Petition for a Writ of Certiorari to

The United States Court of Appeals

For the Federal Circuit

REPLY BRIEF

MEMORANDUM FOR THE UNITED STATES

IN OPPOSITION

The record clearly discloses that Petitioner was not furnished with the proper basis for his relief from active duty on 24 June 1960. Petitioner only obtained the correct basis for his relief after an extremely diligent effort over a period of 19 years when, in 1979 and 1980, the Army finally released

classified documents to Petitioner which formed the basis for this action.

The United States cannot assert a bar based on the statute of limitations when, itself, is guilty of wrongdoing. The trusted defendant standard should be applied in this case and not penalize citizens for their trust in government. (See Yale Law Journal, Vol 95, Issue 7, "Citizen Trust and Government Cover-Up," p. 1477). Law emanates from the people who will not tolerate dishonesty, fraud or concealment by its elected representatives and government officials. The Court is the final arbitrator in these disputes and must side with the people, i.e. Petitioner, especially when the Petitioner did not know the basis of his claim until 1979.

Further, Petitioner has stipulated waiver of his right to money damages which would allow jurisdiction under Section 702, of the Administrative Procedure Act, 5 USC (Supp. III) 702.

Respondent's recommendation to deny Petitioner's request for writ contains indubitable - inducement in error of fact by inference diverting attention from the issue(s)/questions posed to this Honorable Supreme Court, such as, Petitioner was retired (disablity) for "Heart Disease", which simply is not true. Pertinent, in fact, HQ, Department of Army denied rating for heart condition.

The "true" IG elimination record was not knowledgeable to Petitioner by Respondent's failure to notify upon "completion" of findings and recommendations in accordance with their regulations, U.S. statutes and procedural due process.

Petitioner was illegally, wrongfully and fraudulently "for cause" eliminated under "sham" of "annual screening" AR 135-173 on the basis of several ER's received in one unit sustained by IG, *(Reviewed at HQs DA as bias, prejudiced with forgone conclusions)* where confusion, chaos, conspiracy existed. See

"sworn testimony" of MG Hayden Boatner (App 121) without "due process" in violation of Respondent's regulations, federal statutes and denial of "due process" guaranteed by his constitutional bill of rights; and non-compliance with UCMJ, and USC 10 Sec 5706.

Respondent classified his illegal actions within "sequestered" IG records thereby priviledged (APX P-233) communications by US Statute and not discoverable by diligence or otherwise available to Petitioner unless informed by the Respondent as required by his regulations (APX P-234), thereby the exception "tolling" the statute of limitations until discovery June 1979 through cover-up, fraudulent, illegal and wrongful Board action, violation of 10 USC Sec 5706, fraudulent concealment, hidden in the IG "sequestered" records pursuant to UCMJ (APX P-262).

The Court(s) below decided on "summary judgement" untimely filed and "decisively rejected petitioner's contentions that

the government concealed material information...") The court concluded that the Army in 1960 had fully and accurately --- "strains credulity (Pet. App. 59). The Solicitor General further quotes the Court:

> "It is clear from the record that the Army did not conceal any critical facts that would keep the plaintiff from knowing that he had a claim against the Army on June 24, 1960, the date of his discharge from active duty. Plaintiff was aware at the time of his discharge of the reasons why he was discharged."

(This is an assumption unsubstantiated and not true. "Fabricated by DA-JAG and BCMR).

Peti toner's records are full of documents that confirm violation of procedural regulations that show concealment and fraud. No consideration is given a fact finding hearing. Only the BCMR and Court's verstions, without ascertaining the truth "strains

credulity". However the records clearly states the withholding of information, concealment and fraudlent action by the Respondent's records showing positive "coverup"; not logical, and logically flawed that Petitioner should have known. Records contain evidence, pertinent, material concealment, disposed safeguards in records, disregarded by Courts without hearing is incredible; pertinent, fact Court opinion:

> "In order to successfully toll the statute of limitations under a concealment theory, courts have required plaintiffs to plead affirmatively and to show deceptive or fraudulent concealment that induces justifiable reliance and delay in bringing an action. See Ocean S.S. Co v. US - (P. Apx P-055).

So pleaded by the Petitioner based on Respondent's records. Therefore, it is inconceivable that the Courts would grant a "Summary Judgement" without hearing Plaintiffs pleading of "illegal, wrong-

ful, fraudulent" separation; documented, concealed within "sequestered" IG records until discovery June 1979. Litigation was filed within six year statute of limitations and further denial of Petitioners' rights to admission, discovery and depositions to prove the fraudulent concealments is credulous; with all evidence of "concealment" support of Petitioner's claim.

The quoted response to interrogatories of 11 September 1959; as for to Petitioner's knowledge were accepted, unfounded allegations dismissed by HQs DA as he was informed his separation was based on "annual screening" qualified (AR 640-98) records by ADB.

This claim was filed within six years of Petitioner gaining knowledge, June 1979.

Administrative remedies before the BCMR were for other reason(s) through 1981, i e., OERs. A separate and distant action since Petitioner was unaware of the concealment, illegal, fraudulent

separation actions until 1979.

Therefore, it is prayed for that Respondent's request of denial of petition not be granted; and, this Honorable Supreme Court grant Writ of Certiorari guaranteeing members of the Armed Forces their "constitutional due process"; by far, not a "frivolous claim" by Respondent's intentional violation of their regulations, federal statutes, and the "soldier's" constitutional rights which he defends with his life in war and peace.

The time is ripe for the Supreme Court to evaluate the on-going goverment concealments, and cover-up of fraudulent actions hidden in classified and/or sequestered diversified records among the bureaucracy by intentional bureaucratic means, at the expense of the general public.

The question(s) proposed to this Supreme Court are of Constitional dealing with the rights and liberties of individuals, and focusing on protecting

property rights which this Court is the final arbitor and these laws of the land have unquestioned with "conflicting opinions" and review is warranted.

Dated: 19 June 1987

BY: IRVIN JAMES HUNTZINGER, Sr.

Pro se

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

IRVIN JAMES HUNTZINGER, Sr., PETITIONER	)	
	)	
v.	)	No. 86-1801
	)	
UNITED STATES OF AMERICA	)	

CERTIFICATE OF SERVICE

I hereby certify that I have deposited copy(s) of this document, postage prepaid, FIRST CLASS, U.S. Mail this 19th June 1987 TO:

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